UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 13-1436 AG (JPRx)	Date	January 12, 2015
Title	ALLERGAN USA, INC., et al. v. MEDICIS AESTHETICS, INC., et al.		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs: Attorneys Present for Defendants:

Proceedings: **[TENTATIVE] ORDER DENYING PLAINTIFFS' MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT**

In this case, Plaintiffs Allergan USA, Inc. and Allergan Industrie, SAS ("Plaintiffs") assert patent infringement claims against that Defendants Medicis Aesthetics, Inc., Medicis Pharmaceutical Corporation, Valeant Pharmaceuticals North America LLC, Valeant Pharmaceuticals International, and Valeant Pharmaceuticals International, Inc. ("Defendants"). Plaintiffs filed a Motion for Leave to File a Third Amended Complaint, seeking to join Q-Med AB ("Q-Med")—the manufacturer of the allegedly infringing products—as a defendant. ("Motion," Dkt. No. 95.)

Because Plaintiffs haven't persuaded the Court that there was good cause for the delay in seeking this amendment, the Motion is DENIED.

BACKGROUND

Plaintiffs filed this case in September 2013. At that time, Plaintiffs knew that Q-Med manufactures the allegedly infringing products. (See Compl., Dkt. No. 1, ¶ 26.) In February 2014, the Court issued a scheduling order stating that "[a]bsent exceptional circumstances, any motion to join another party or to amend a pleading shall be filed and served within 60 days after the date of this Order." ("Scheduling Order," Dkt. No. 34, at 3:7-10.) Plaintiffs did not seek to add Q-Med during that period.

Plaintiffs discovered in August 2014 that Q-Med has a contractual obligation to supply Defendants with the allegedly infringing products for sale in the U.S. and to indemnify them for third-party patent infringement claims. After discovering this information, Plaintiffs discussed with Defendants the possibility of a stipulation to add Q-Med as a party. Q-Med refused to stipulate, raising jurisdictional concerns. Plaintiffs filed this Motion on December 16, 2014—about four months after discovering the supply agreement.

LEGAL STANDARD

"[W]hen a party seeks to amend a pleading after the pretrial scheduling order's deadline for amending the pleadings has expired, the moving party must satisfy the 'good cause' standard of Federal Rule of Civil Procedure 16(b)(4) . . . rather than the liberal standard of Federal Rule of Civil Procedure 15(a)." *In re Western States Wholesale Nat'l Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013). "While a court may take into account any prejudice to the party opposing modification of the scheduling order, 'the focus of the [Rule 16(b)] inquiry is upon the moving party's reasons for seeking modification . . . [i]f that party was not diligent, the inquiry should end.'" *Id.* (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1993) (alterations in original)).

ANALYSIS

In arguing that they were diligent in seeking leave to amend the complaint, Plaintiffs point primarily to two factors. Neither is persuasive.

First, Plaintiffs argue that timing of the Motion is attributed to their August discovery of the supply agreement between Q-Med and Defendants. They say that the supply agreement alerted them to possible claims against Q-Med for inducing patent infringement. But even if that discovery explains Plaintiff's failure to meet the scheduling order deadline, it does not explain why, after discovering the agreement, Plaintiffs waited four months to file this Motion. While Plaintiffs point out that they sought during that time to join Q-Med by stipulation, including holding a lengthy email discussion with Defendants concerning personal jurisdiction over Q-Med, these prolonged discussions do not excuse a four-month delay. The evidence shows that Q-Med refused to stipulate as early as October. Under such

circumstances, the Court does not find that the discovery of the supply agreement is good cause for the Motion filed four months later.

Second, Plaintiffs argue that they must join Q-Med as a Defendant "in order to . . . complete discovery." (Motion at 3:4-5.) They assert that Q-Med is "the only entity that might have some knowledge about the technical aspects of the accused products." (*Id.* at 11:14-16.) According to Plaintiffs, they were misled into believing that Defendants had the necessary technical information, and they did not realize until late November that they could only discover this information from Q-Med. Plaintiffs soon thereafter filed this Motion.

Even taking Plaintiffs' assertions as true, however, they fail to identify any authority suggesting that such discovery issues are good cause to join a party after the scheduling order cut-off. Lacking such, the Court is unpersuaded. Discovery procedures are the proper avenue for resolving this issue, not joining a new party many months after the scheduling order cut-off.

Plaintiffs also contend they cannot get complete relief without joining Q-Med, but their arguments are unconvincing. The discovery of new claims against Q-Med does not mean it must join this case at this late stage. Neither does an indemnification agreement make it a necessary party.

Further, this case was filed in 2013. This Court has created its Standing Patent Rules among other reasons to proceed orderly and promptly to trial. Ramming a new defendant into this case at this late date would likely throw this case into disarray. Let's move on to trial!

The Motion is DENIED.

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